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9 UNITED STATES DISTRICT COURT

10 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

12 ATARI INTERACTIVE, INC.,

13 Plaintiff,

14 vs.

15 REDBUBBLE, INC.,

16 Defendant.

17 AND RELATED ACTIONS

Case No. 4:18-cv-03451-JST

[*Related to Case Nos. 3:18-cv-03843-JST; 3:18-cv-04115; 4:18-cv-04949-JST; and 4:19-cv-00264-JST*]

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF ATARI INTERACTIVE,
INC.'S MOTION FOR SUMMARY
JUDGMENT**

Judge: Hon. Jon S. Tigar
Date: July 8, 2020
Time: 2:00 pm
Crtrm.: 9

REQUEST FOR JUDICIAL NOTICE

Pursuant to FED. R. EVID. 201, as well as the authority cited herein, and in support of its Motion for Summary Judgment, Atari Interactive, Inc. (“Atari”) hereby requests that the Court take judicial notice of the following items:

- The oral arguments made by counsel, on March 12, 2020, in *The Ohio State University v Redbubble, Inc.*, Case No. 19-3388, before the Sixth Circuit Court of Appeals. A true and correct copy of the Sixth Circuit’s audio recording from this oral argument is attached hereto as “**Exhibit A.**”
- The Australian Federal Court decision *Hells Angels Motorcycle Corp. (Aust.) Pty Ltd. v Redbubble Ltd.*, [2019] FCA 355. A true and correct copy of this decision, obtained from the Australian Federal Court’s website, is attached hereto as “**Exhibit B.**”
- The Australian Federal Court decision *Pokémon Co. Int’l, Inc. v Redbubble Ltd.*, [2017] FCA 1541. A true and correct copy of this decision, obtained from the Australian Federal Court’s website, is attached hereto as “**Exhibit C.**”

I. LEGAL STANDARD

Pursuant to FED. R. EVID. 201(b), judicial notice is appropriate for facts “not subject to reasonable dispute” because they are either: “(1) generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Courts must take judicial notice upon request if the court is supplied with the necessary information. *Id.* at (c)(2).

II. THE COURT MAY TAKE JUDICIAL NOTICE OF THE ORAL ARGUMENT BEFORE THE SIXTH CIRCUIT IN THE OHIO STATE UNIVERSITY V. REDBUBBLE, INC. CASE

Federal courts may take judicial notice of the oral arguments made at hearings. *See, e.g., Engine Mfrs. Ass’n v. S. Coast Air Quality Mgmt. Dist.*, 498 F.3d 1031, 1039 n.2 (9th Cir. 2007) (taking judicial notice of oral argument before the Supreme Court); *see also, e.g., Reyn’s Pasta Bella, LLC vs. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (“[The Court] may take judicial notice of court filings and other matters of public record.”).

Here, as explained in the Wesley Decl., the audio recording of the oral argument before the Sixth Circuit in *The Ohio State University v Redbubble, Inc.* is maintained by the Sixth Circuit, and publicly available on the Sixth Circuit’s website. Thus, the Court may take judicial notice of

1 **Exhibit A.**

2 **III. THE COURT MAY TAKE JUDICIAL NOTICE OF FOREIGN COURT**
 3 **DECISIONS CONCERNING REDBUBBLE**

4 Federal courts can and routinely do take judicial notice of decisions made in foreign courts.
 5 *See, e.g., Cerner Middle E. Ltd. v. iCapital, LLC*, 939 F.3d 1016, 1023 n.8 (9th Cir. 2019) (taking
 6 judicial notice of French trial court decision); *Fed. Trade Comm’n v. Qualcomm Inc.*, No. 17-CV-
 7 00220-LHK, 2018 WL 5848999, at *6 (N.D. Cal. Nov. 6, 2018) (taking judicial notice of decision
 8 from United Kingdom High Court of Justice); *Tahaya Misr Inv., Inc. v. Helwan Cement S.A.E.*,
 9 No. 2:16-cv-01001-CAS(AFMx), 2016 WL 4072332, at *1 n.3 (C.D. Cal. July 27, 2016) (taking
 10 judicial notice of Egyptian court orders).

11 Here, the Australian Federal Court decisions are decision made in a foreign court. Thus,
 12 the Court may take judicial notice of **Exhibit B** and **Exhibit C**.

13 **IV. CONCLUSION**

14 For the foregoing reasons, pursuant to FED. R. EVID. 201. Atari respectfully requests that
 15 the Court take judicial notice of the above-referenced documents.

16 Dated: April 29, 2020

BROWNE GEORGE ROSS LLP

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 Matthew L. Venezia

19 By: /s/ Matthew L. Venezia

Matthew L. Venezia

Attorneys for Plaintiff Atari Interactive, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2020, I electronically filed the foregoing
**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ATARI INTERACTIVE, INC.'S
MOTION FOR SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF
system which will send notification of such filing to the following:

SERVICE LIST

Atari Interactive, Inc. v. Redbubble Inc.
U.S.D.C. N.D. CA, Oakland Division Case No. 4:18-CV-03451-JST
[Related to Case Nos. 3:18-cv-03843-JST; 3:18-cv-04115; 4:18-cv-04949-JST;
and 19-cv-00264-JST]

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